



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Marlene Elwell  
Catholics in the Public Square  
25270 Ridgewood Drive  
Farmington Hills, Michigan 48336

NOV 04 2008

RE: MUR 5972  
Iowa Christian Alliance

Dear Ms. Elwell:

On February 13, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On October 29, 2008, the Commission found, on the basis of the information in the complaint, and information provided by respondents that there is no reason to believe you or Iowa Christian Alliance violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Sidney Rocke".

Sidney Rocke  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Marlene Elwell

MUR 5972

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Stacey Cargill pursuant to 2 U.S.C. § 437g(a)(1).

**II. FACTUAL SUMMARY**

ICA is a non-profit organization currently registered as an active Iowa state corporation. ICA does not appear in the FEC database as a registered political committee. Its website notes that it has an Internal Revenue Service section 501(c)(4) tax exempt status. See <http://www.iowachristian.com>. According to the IRS, ICA falls under the category of civic leagues and social welfare organizations. See <http://www.irs.gov>. In order to qualify for this exemption, the organization's net earnings must be devoted only to charitable, educational, or recreational purposes; and no part of the organization's net earnings may benefit any private shareholder or individual. *Id.* ICA's website states that, due to its section 501(c)(4) status, it cannot and will not endorse any candidates in the upcoming 2008 elections and that none of its officers will do so either. See <http://www.iowachristian.com/news/html>.

Complainant alleges that Scheffler allowed Elwell to use ICA's office, office equipment, conference room and possibly its database to influence Iowa Christian conservatives to vote for Romney rather than Huckabee in the Iowa Caucuses when

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Elwell made phone calls inviting individuals to attend an ICA event. According to a MSNBC article attached to the Complaint, Complainant received a phone call from Elwell on or about November 30, 2007, inviting her to attend an ICA event that was scheduled to take place on December 1, 2007. Jim Bopp, a representative of the Romney Committee, was to attend the event ("Bopp/Romney event") at which potential voters had been invited to discuss Romney's stance on a variety of pro-family issues. According to Complainant, Elwell's phone call came from an ICA phone line.

Complainant contends that Elwell, during the course of the phone conversation, referred to Huckabee as a "spoiler" and stated that she was "working to slow down his momentum." After the Bopp/Romney event was canceled due to inclement weather, Elwell and Scheffler had an informal discussion with the three invitee, including Complainant, who showed up for the event. Complainant asserts that, despite the fact that Elwell and Scheffler verbally stated prior to the discussion that ICA was not endorsing candidates, "Scheffler spoke highly of Romney and stated that Huckabee would not be able to win the Republican nomination." Complainant does not assert that Elwell, during the informal discussion, made any comments about the Presidential candidates that she viewed as questionable. Instead, Complainant's allegations regarding Elwell's comments pertain to the telephone conversation occurring prior to the informal discussion. It appears that Complainant felt that Elwell's statements made during the telephone conversation and the statements subsequently made by Scheffler, during the

informal discussion, were inconsistent with their prior stance of not endorsing any Presidential candidate.<sup>1</sup>

In addition, Complainant generally alleges that Scheffler and Elwell's comments were intended to influence an election in violation of the Act, thereby possibly jeopardizing ICA's tax exempt status. Complainant also alleges that ICA received a financial contribution from a Romney source in exchange for granting Elwell access to ICA's database. However, Complainant did not provide any further details regarding the identity of this alleged Romney source or the timeframe during which the alleged financial contribution was made to ICA.<sup>2</sup>

In ICA's response to the complaint, Scheffler asserts that the ICA "facilitates opportunities for all candidates and/or their representatives – Democrat and Republican – to meet with pro-family activists in Iowa" and that Huckabee was present at two [previous] house parties held so that candidates could be questioned by pro-family activists. Scheffler states that he requested that Elwell, as a personal friend, make phone calls on his behalf to invite a limited number of pro-family activists to attend the Romney/Bopp event. Scheffler gave Elwell permission to use telephones in ICA's office

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<sup>1</sup> Complainant also implies that Elwell's hotel accommodations were being paid for by ICA and, in fact, claims that Elwell admitted to being paid, but declined to reveal the source of the payment. Elwell, in her response, denies that she ever told the Complainant that she was being paid. However, she admits that she declined to reveal the names of the people who were covering her expenses while in Iowa. Complainant makes no specific allegation as to what provision of the Act may have been violated by the Respondents. Based on the available information, it does not appear that ICA would have violated any provision of the Act by paying for Elwell's hotel accommodations.

<sup>2</sup> Although the complaint alleges that ICA possibly jeopardized its tax exempt status by engaging in actions to influence an election during the Iowa Caucuses, it is clear that we do not have jurisdiction to consider the merits of this particular claim. Therefore, we will not consider the issue of whether ICA's alleged actions are in violation of the requirements for maintaining its Internal Revenue section 501(c)(4) status.

for that purpose alone. According to him, "no one who was invited to the meeting has called the ICA office to complain that Elwell was promoting Romney and encouraging people not to support Huckabee." Scheffler denies that Elwell was ever given access to ICA's database or that ICA received a contribution from a Romney source in exchange for providing Elwell access to the database.<sup>3</sup>

Elwell also filed a response denying the allegations of the complaint. According to her, Scheffler gave her a list of approximately fifty-five (55) people to be contacted, presumably those with an interest in meeting with Bopp to discuss Romney's stance on pro-family issues. While Elwell admits to using ICA's phones to make invitation calls at the request of Scheffler, she asserts that she made it clear during those conversations that neither ICA nor Scheffler were endorsing Romney or any other candidate for President. In addition, Elwell does admit to having personal conversations with some of the invitees during the phone calls as she was personally acquainted with some of them.

Elwell states she was present at ICA's office to greet the guests on the day of the Bopp/Romney event. Prior to the start of the event, she received a phone call from Scheffler informing her that Bopp would be unable to attend due to inclement weather conditions. Scheffler asked her to stay to greet any guests who would show up and inform them of the cancellation. Only 3 guests attended the event, including

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<sup>3</sup> ICA's response contains an affidavit from Morris Hurd, Chairman of the ICA Board ("Hurd"), in which he states that, contrary to the blog cited in the complaint, he did not endorse Romney as a representative of ICA, but "rather in his individual capacity and as an extension of his personal opinion." It appears that Hurd made a statement during the introduction of Romney at a political rally which was viewed as an endorsement by the ICA. The *Iowa Independent* also ran an article a few days later in which Hurd was quoted as saying that "his statements should not be viewed as an official endorsement" and that "as a non-profit, tax exempt organization, the ICA is prohibited from supporting a specific candidate." See <http://www.iowaindependent.com/userDiary.do?personId=45&nextDiaryId=2>. However, the complaint itself does not raise a specific issue about Hurd or his comments.

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Complainant. According to Elwell, she engaged in an informal discussion with the three attendees, including Complainant, after making it clear that the conversation would be “personal and off the record” and in no way an endorsement of any candidate on behalf of ICA, Scheffler or herself. She asserts that she never expressed support for any candidate during the informal discussion. Scheffler, upon his arrival, expressed some personal opinions about the Presidential candidates after reaffirming his position that neither he nor ICA was endorsing any candidate.

### **III. LEGAL ANALYSIS**

Complainant alleges that Elwell’s use of ICA facilities and the comments made during the telephone conversation with Complainant and thereafter during their informal discussion constitute efforts by ICA to influence Iowa Christian conservatives to vote for Romney. In addition, Complainant contends that Elwell was granted access to ICA’s database in exchange for a financial contribution to ICA from a Romney source. Further, Complainant alleges that comments made by Scheffler during the informal discussion constitute efforts by ICA to influence voting. However, there is no information to suggest that any of Elwell’s or Scheffler’s activities/comments constitute a violation of the Act.

#### **A. Elwell and Scheffler comments**

Scheffler has admitted that Elwell used ICA’s telephones and office space with his permission for the limited purpose of extending invitations to the Bopp/Romney event. Scheffler also states that there were no complaints from any invitee, other than Complainant, indicating that Elwell engaged in activities beyond this specific task during the telephone calls. Complainant did not provide any information suggesting that any of

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the other call recipients viewed Elwell's comments as attempts to influence their voting decisions. Further, Complainant does not address whether Elwell, during the course of the telephone conversation, informed her that none of the parties (ICA, Scheffler, and Elwell) were endorsing Romney or any other presidential candidate. However, Elwell, in her response, states that she specifically indicated during the telephone conversations that neither ICA nor Scheffler were endorsing any Presidential candidate.

In addition, Elwell states that both she and Scheffler made it clear prior to the informal discussion that none of their comments were to be taken as an endorsement of any candidate on behalf of ICA. Despite this caveat, Complainant takes issue with Scheffler "speaking highly of Romney" while at the same time voicing concern about whether Huckabee would be able to win the Republican nomination.<sup>4</sup> Complainant does not allege that Elwell, during the informal discussion, made any specific comments constituting an endorsement of Romney.

Nevertheless, it appears that any comments made by Scheffler, no matter how complimentary of Romney or critical of Huckabee, were personal opinions and not an official endorsement/statement on behalf of ICA. Therefore, there is nothing to indicate that Scheffler violated any provision of the Act in connection with his statements. Similarly, it also appears that any comments Elwell made during the telephone conversation was a personal opinion and not an official endorsement/statement on behalf of the ICA.

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<sup>4</sup> Complainant speaks in general terms regarding the nature of the comments made by Scheffler during the informal discussion rather than providing specific comments made by Scheffler.

**B. Alleged Romney Contribution**

Complainant contends that Elwell was granted access to ICA's database in exchange for a financial contribution from a "Romney source." However, Complainant does not specify the types of information that were allegedly provided to Elwell or the way in which this information would have been used by Elwell for Romney's benefit. In addition, the complaint does not provide any specifics as to the identity of the "Romney source" or the nature of the financial contribution alleged to have been provided by the Romney Committee. All Respondents deny that ICA ever provided Elwell with access to the database or that it did so in exchange for any financial contribution from the Romney Committee or any other political committee.

In their Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, issued December 21, 2000), four Commissioners stated, "Absent personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation ... so as to warrant a focused investigation that can prove or disprove the charge." In their Statement of Reasons in MUR 5141 (Moran for Congress, issued March 11, 2002), six Commissioners stated that a complaint may provide a basis for reason to believe findings if it alleged "sufficient specific facts" that, if proven would constitute a violation of the Act. *Id.* The Commissioners also stated, however, that "[u]nwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true" and that "a complaint may be dismissed if it consists of factual allegations that are refuted by sufficiently compelling evidence produced in responses to complaint."

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The only facts provided by the Complainant are that Elwell used ICA's office space to make telephone calls for the Bopp/Romney event. Complainant also speculates that ICA possibly received a financial contribution from a "Romney source" in exchange for Elwell's access to the database. However, Complainant does not provide any information to support the allegation that Elwell had access to any database or the identity of the "Romney source" that allegedly made the financial contribution to ICA. In contrast to the complaint's lack of supporting detail, the responses specifically deny that Elwell was ever provided with access to the ICA database in exchange for a financial contribution from a "Romney source."<sup>5</sup> Therefore, Complainant has not submitted sufficient information to support the allegation that ICA violated any provision of the Act.

#### **IV. CONCLUSION**

Accordingly, the Commission found no reason to believe that Marlene Elwell violated any provision of the Act or regulations and closed the file.

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<sup>5</sup> We conducted a search of the FEC database to determine if the Romney Committee has made any contributions to or expenditures on behalf of ICA. We found no information to indicate that the Romney Committee made a contribution to ICA or expenditure on behalf of ICA from November 2007 through April 2008.